

# NEW HAMPSHIRE REAL ESTATE COMMISSION

## COMMISSION MEETING

OCTOBER 14, 2003

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, October 14, 2003 at 9:00 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 9:00 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Pauline Ikawa, Nancy LeRoy, Robert Stephen, Executive Director Beth Emmons, and Investigator Ann Flanagan.

- I. Motion by Commissioner Ikawa, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on September 16, 2003.

II. APPOINTMENTS

9:00 a.m. - Equivalency Interviews

<u>CANDIDATE</u>	<u>COMMISSIONER</u>	<u>DETERMINATION</u>
GREG COLBY	SLATTERY	DENIED
WILLIAM DIETICH	LeRoy	DENIED
VICTORIA RALL	LeRoy	APPROVED
CHARLES WIBEL	LeRoy	APPROVED

9:30 a.m. – STEPHEN L. WELLS appeared before the Commission to explain a “yes” answer to question #8 on his broker’s application. After review and discussion, and on motion by Commissioner Stephen, seconded by Commissioner LeRoy, the Commission unanimously approved Mr. Wells’ broker application for licensure, based on the fact that Mr. Wells’ legal incident did not involve violence.

DISCUSSION

Complainants Sara and Art Gindin submitted a Request for Withdrawal of Complaint File No. 6-2-00. After review and discussion, the Commission directed the Commission’s Investigator to review the Complaint to determine if there is sufficient evidence for the Commission to initiate a parallel complaint.

Sue Tasker of Re/Max Signature submitted an inquiry regarding whether an office or agent can enter names of past buyers and/or sellers into a drawing for a prize or prizes, and whether there is a dollar limit on the prize value; can the drawing be advertised publicly or in general mailings; and whether the prize can be cash. After review and discussion, the Commission decided that it was permissible under RSA 331-A, so long as it is allowable by the NH Sweepstakes Commission. The Commission directed the Executive Director to send Senior Assistant Attorney General Wynn Arnold's Opinion on RSA 331-A:26 XXIV to Ms. Tasker.

The Commission's Investigator presented the following question to the Commission for clarification:

A real estate agency has a listing to lease with a landlord. This listing stipulates that the landlord pay a fee to the real estate agency for obtaining a lease from a tenant, and that the real estate agency represents the landlord. The real estate agency locates a tenant who is unable to commit to a lease, but is willing to rent the property on a month by month basis. This is agreeable to the landlord if the tenant pays the fee to the real estate agency. The real estate agency wants to know if it can accept a fee from the tenant without a contract to do so, or, if a contract is required, would the real estate agency be acting as a dual agency?

After review and discussion, the Commission ruled that it is permissible for the tenant to pay the landlord's fee without another contract to do so, which would not create a fiduciary relationship with the tenant. Therefore, there is no dual agency.

**COMMISSION RECIPROCAL AGREEMENTS** – The Commission discussed the current licensing requirements of New Hampshire licensees who apply for licensure through reciprocity in the reciprocal states. Currently Vermont is the only reciprocal state that requires New Hampshire licensees who apply for a broker's license through reciprocity to complete education requirements prior to obtaining a license. New Hampshire does not require Vermont licensees to show proof of education prior to licensure. After review and discussion, the Commission directed the Executive Director to discuss this issue with the Director of the Vermont Real Estate Commission. Should Vermont continue to require the education from New Hampshire licensees, the Commission will require Vermont licensees who apply for a broker license to show proof of 60 hours of Commission approved study prior to examination.

## **OTHER BUSINESS**

1. Tuesday, November 18, 2003, was unanimously approved as the date for the next regular meeting. The Commission unanimously decided that each regularly scheduled Commission will begin at 8:30 a.m., instead of 9:00 a.m., starting with the November 18, 2003 Commission meeting.
2. CASE EVALUATIONS - None

3. ORDER

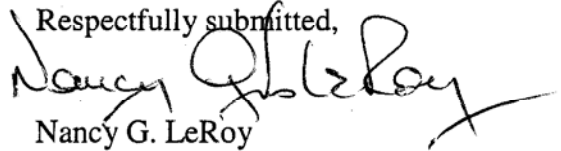
The following Order was issued by the New Hampshire Real Estate Commission. A copy of the Order is attached and becomes part of the official minutes of this meeting.

FILE NO. 2003-05-03 NEW HAMPSHIRE REAL ESTATE COMMISSION V. JOHN R. ROBERGE

VI. **ADJOURNMENT**

Motion by Commissioner Ikawa, seconded by Commissioner LeRoy to adjourn the meeting. Chairman Slattery adjourned the meeting at 10:45 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy G. LeRoy", written over the typed name.

Nancy G. LeRoy  
Acting Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION  
V.  
JOHN R. ROBERGE

FILE NO. 2003-05-03

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violation of NH RSA 331-A:XXXVII by John R. Roberge. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. John R. Roberge (hereinafter referred to as Respondent) was licensed as a real estate salesperson on January 7, 1988, and was licensed as a real estate broker on July 10, 1989, and was so licensed as a principal broker at the time of the alleged violations.

2. Respondent failed to appear at the New Hampshire Real Estate Commission hearing scheduled for September 16, 2003 at 9:30 a.m. Respondent arrived at the office of the New Hampshire Real Estate Commission at approximately 9:10 a.m., but left at 9:27 a.m. indicating to the office staff that he thought the hearing was for 9:00 a.m. and that he had another appointment elsewhere. The hearing in the above captioned matter started at approximately 9:35 a.m. without Respondent's presence.

3. In accordance with Rea 205.11, the presiding officer declared Respondent to be in default and proceeded to hear the testimony and receive the evidence offered by the party bearing the burden of proof in the case (the New Hampshire Real Estate Commission).

4. Commission Investigator, Ann Flanagan testified that Respondent originally came into the New Hampshire Real Estate Commission office complaining that Arthur Sullivan and Tracy Murphy Roche were advertising property in the MLS under the name Brady-Sullivan Properties. Respondent was told that Arthur Sullivan had ownership interest in Brady-Sullivan Properties (Tracy Murphy Roche works for Brady-Sullivan Properties).

5. Commission Investigator, Ann Flanagan testified that Respondent was informed that this was the type of matter that would usually be handled by contacting Arthur Sullivan to notify him to either license Brady-Sullivan Properties with the New Hampshire Real Estate Commission or discontinue using it on the MLS. Respondent indicated that he preferred to file a formal complaint, which he did so file (File No. 2003-04-01 John R. Roberge v. Arthur Sullivan & Tracy Murphy Roche).

6. Response Form 11-A's of Arthur Sullivan and Tracy Murphy Roche, File No. 2003-04-01 John R. Roberge v. Arthur Sullivan & Tracy Murphy Roche, through their attorney Emile R. Bussiere, Jr., contained allegations against Respondent that Respondent

allegedly failed to disclose a criminal conviction to the New Hampshire Real Estate Commission within thirty (30) days pursuant to NH RSA 331-A:26, XXXVII.

7. Respondent on December 3, 2002 was convicted of Criminal Threatening, Class A Misdemeanor. "The defendant did threaten to commit any crime against the person of another with a purpose to terrorize any person to wit, Roberge made statements that Carolyn Roberge was done and that he would take care of her for calling the police and stated several times that there would be hell to pay for everyone involved and made threats to return to the premises after getting released and burn the apartment building down placing Carolyn Roberge in fear for her safety." Respondent received a twelve (12) month suspended sentence and was required to continue drug/alcohol counseling.

8. Respondent's sworn notarized signed Form 11-A reply to the complaint was: "In response, I respectfully reply that it was an inadvertent oversight. Upon receiving an application for renewal I had gathered the necessary paperwork to do so."

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent was aware of the occurrence of these proceedings. He was sent notices by mail and was served in hand by the Commission Investigator with a hearing notice. He arrived at the hearing location on the hearing date. Respondent left the hearing location, making himself unavailable for the proceedings. The Commission would have preferred to address its concerns regarding these allegations against Respondent with Respondent present at the hearing. However, Respondent elected to walk away from the proceedings. The Commission reviewed the case complaint file and reply, and decided that the evidence confirms that Respondent did fail to disclose a criminal conviction to the New Hampshire Real Estate Commission within thirty (30) days. Therefore, the Commission rules that Respondent did violate NH RSA 331-A:26, XXXVII.

In view of the foregoing rulings of law, the Real Estate Commission hereby Orders that John R. Roberge pay a disciplinary fine to the State of New Hampshire General Fund within sixty (60) days in the amount of \$1,000. The Commission further Orders the revocation of John R. Roberge's real estate license. John R. Roberge shall surrender his real estate broker wall license and pocket ID card to the Commission.

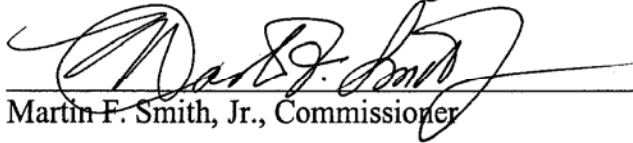
Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Commissioner LeRoy evaluated this case and did not take part in the hearing or decision.

  
Arthur H. Slattery, Chairperson


10-14-03

DATE

  
Martin F. Smith, Jr., Commissioner

10/14/03

DATE

  
Pauline Ikawa, Commissioner

10/14/03

DATE

NEW HAMPSHIRE REAL ESTATE COMMISSION

V.

ROBERT K. TOWNER

FILE NO. 2003-05-01

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violations of NH RSA 331-A:26, I, IX, and XXXVI by Robert K. Towner. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. Robert K. Towner (hereinafter referred to as Respondent) was licensed as a real estate salesperson on October 7, 1994, and was so licensed at the time of the alleged violations.
2. On October 6, 1994, Respondent made sworn, notarized, signed application to the New Hampshire Real Estate Commission for an original real estate salesperson license.
3. Question #4 of the application requires the applicant to disclose employment for the past 5 years. Respondent indicated on the application that he worked for Child & Family Services from September 1987 to October 1993, and that he worked at the Wreath School from October 1993 to present (October 6, 1994).
4. Respondent did not disclose that he was a Catholic priest in Massachusetts until his laicization on April 2, 1990.
5. Respondent testified that even though he was not actually laicized until April 2, 1990, he was on a leave of absence and was not actually working as a priest (T. p. 49, lines 5-7).
6. Question #3 of the salesperson application requires the applicant to disclose resident addresses and dates for the past 5 years. There is documentation of correspondence to and from Respondent and the Archdiocese indicating a Chicopee, Massachusetts address which was not disclosed on application Question #3.
7. Respondent testified that he did write and sign a letter to Reverend John McCormick on September 16, 1994 notifying Rev. McCormick of Respondent's new address at 172 Hampden Street, Chicopee, Massachusetts, 01013 (Tr. p. 53, lines 15-19).
8. Respondent submitted a notarized Affidavit (Respondent's Exhibit 4) signed by Reverend Victor Carrier which stated that Rev. Carrier owned and lived at 172 Hampden Street, Chicopee, Massachusetts 01013 until the property was sold in 1998. Rev. Carrier indicated in his Affidavit that Respondent never resided at that address, but that: "In and around 1994, some of Mr. Towner's mail would be received at my residence

in Chicopee, Massachusetts. I would then forward the mail to Mr. Towner's residence in New Hampshire."

9. Respondent testified that he had his mail sent to the Chicopee Massachusetts address because he did not want to receive it at his actual residence in New Hampshire because he did not want his family to see the correspondence regarding the allegations against Respondent (Tr. p. 56-57, lines 20-12).

10. Respondent now lives and works in Laconia, New Hampshire, and Commission records so indicate.

11. Question #10 on the original salesperson application, and subsequent renewal applications, asks: "Have you ever been or are you now involved in any matters which may affect your good repute or trustworthiness or have any relation to or bearing upon whether you are entitled to public confidence?" Robert Towner answered "No" in response on his application.

12. On December 30, 2002, the Investigator for the New Hampshire Real Estate Commission sent a certified letter to Respondent at his office at Coldwell Banker Steve Weeks Realtors, demanding that Respondent furnish to the Commission a copy of the 405 page document deemed non-confidential and public by the Massachusetts courts, regarding accusations against Respondent for child molestation during his association with the Catholic Diocese of Massachusetts as a priest.

13. On June 4, 2003, Respondent in his sworn notarized signed Form 11-A reply to the New Hampshire Real Estate Commission complaint File No. 2003-05-01 against him, Respondent indicated that he believed that to furnish the documents would be "against public policy, and that the Commission obviously was able to get some of what it deemed as relevant documentation in the ordinary course and without charge".

14. Ann Flanagan, the Investigator for the New Hampshire Real Estate Commission, testified that the Archdiocese documents regarding Respondent's employment as a Catholic priest were declared public records by the Massachusetts courts, but because of Respondent's refusal to comply with the Investigator's demand that Respondent furnish his employment documents, the Commission's Executive Director had to get a waiver from Governor & Counsel for the cost of obtaining the documentation (Tr. p. 9-10, lines 12-1).

15. Ann Flanagan, the Investigator for the New Hampshire Real Estate Commission, testified that the Form 11 complainant File No. 2003-05-01 allegations against Respondent state that: "Official public church documents and documents from the Attorney General's Office reveal that Robert Towner had numerous well-documented incidents of bisexual child abuse, although most of the incidents involved boys....Even though some of these incidents were settled out of court, their occurrences are well-documented with no recorded denial and an admission in one case".

16. Ann Flanagan, the Investigator for the New Hampshire Real Estate Commission, testified that the Form 11 complainant File No. 2003-05-01 allegations against Respondent state that: "Since the church documents became public, several newspaper accounts have generated public concern...."

17. Respondent testified that he answered "No" to Question #10 on his original salesperson application, and subsequent renewal applications: "Have you ever been or are you now involved in any matters which may affect your good reput e or trustworthiness or have any relation to or bearing upon whether you are entitled to public confidence?" because he felt that he would eventually be proved innocent of the allegations (Tr. p. 58, lines 3-10).

18. Respondent testified that he answered "No" to Question #10 on his original salesperson application, and subsequent renewal applications: "Have you ever been or are you now involved in any matters which may affect your good reput e or trustworthiness or have any relation to or bearing upon whether you are entitled to public confidence?" because, even though he had not yet signed a Settlement Agreement requiring confidentiality, he was anticipating that if he disclosed this to the New Hampshire Real Estate Commission he would be violating the terms of a Settlement Agreement that he would probably sign later (Tr. p. 90, lines 7-21).

19. Respondent testified that he is not married, but has no children of his own (Tr. p. 38, lines 10-17).

20. Respondent testified that since he has left the priesthood, he has had no allegations made against him at Child & Family Services (Tr. p. 44, lines 21-23), the Wreath School for emotionally handicapped adolescents (Tr. p. 42, lines 17-21), or as a real estate agent (Tr. p. 105, lines 20-23).

21. Respondent's employing principal broker, Stephen Weeks, testified that he hired Respondent as a real estate agent and still feels that Respondent is a trustworthy individual. He just learned of the child abuse allegations recently from the newspapers, but he would have checked into the allegations if Respondent had disclosed them to him at the time he was being hired (Tr. p. 108-109, lines 21-11).

22. Ann Flanagan, the Investigator for the New Hampshire Real Estate Commission, testified that the Suffolk Superior Court files, 2002-1513, 2002-1512, 2002-1546, and 2003-197 (Claimant's Exhibit 1), indicate that Respondent also has current additional lawsuits pending against him where Respondent is personally named as a defendant.

23. Respondent testified that he was not aware that he was a defendant in these additional cases at the Suffolk Superior Court (Tr. p. 84, lines 19-20; Tr. p. 85, lines 5-6, 13-14).

24. Claimant's Exhibit 1 shows documentation of allegations against Respondent spanning several decades from the 1960's through the 1980's.

Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

Respondent chose not to disclose his prior employment as a Catholic priest on his real estate salesperson application even though he was not actually laicized until April 2, 1990, because he was on a leave of absence and was not actually working as a priest. The Commission finds this credible and satisfactory.

The documentation of correspondence to and from Respondent and the Archdiocese prior to the date of his salesperson application indicates a Chicopee Massachusetts address which was not disclosed on Respondent's salesperson application. Respondent testified that he had his mail sent to the Chicopee Massachusetts address because he did not want to receive it at his actual residence in New Hampshire because he did not want his family to see the correspondence regarding the allegations against him. The Affidavit from Rev. Carrier indicating some of Respondent's mail would be received by Rev. Carrier at Rev. Carrier's residence in Chicopee Massachusetts, who would then forward the mail to Respondent's residence in New Hampshire, further substantiates this testimony. The Commission declines to address the matter of Respondent's failure to produce his employment documentation from the Archdiocese of Massachusetts. Therefore, the Commission rules that Respondent did not violate its statutes or rules regarding the issues of employment or residence disclosure on his salesperson application, or failure to produce documents, and is not guilty of violation of NH RSA 331-A:26, IV.

The Commission does not find credible Respondent's explanations for why he answered "No" to Question #10 on his original salesperson application, and subsequent renewal applications: "Have you ever been or are you now involved in any matters which may affect your good repute or trustworthiness or have any relation to or bearing upon whether you are entitled to public confidence?" The Commission does not find credible Respondent's testimony that he was and still is unaware of the allegations and/or lawsuits pending then and now against him. At the time Respondent made sworn notarized signed application to the New Hampshire Real Estate Commission for an original real estate salesperson license, he knew he was involved, as he put it, "in a nightmare" (Tr. p. 91, lines 17-19). He had consulted with his attorney, asked for financial assistance from the Archdiocese, and was having his mail sent to another address. The "nightmare" was continuing when he made his sworn, notarized, signed applications for renewal as well. The Commission does not find credible that one would sign Settlement Agreements with such serious allegations just to avoid litigation if they were innocent of the allegations. The confidentiality clauses which were later overturned by the Massachusetts courts, originally benefited the Respondent in that no one would find out about the allegations.

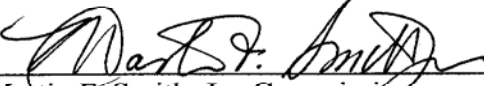
The question, "Have you ever been or are you now involved in any matters which may affect your good repute or trustworthiness or have any relation to or bearing upon whether you are entitled to public confidence?", does not require a criminal conviction in

order to answer in the affirmative. Respondent should have answered the question "Yes" on his original salesperson application and subsequent renewal applications, and have given an explanation. Respondent concealed these matters when he applied for and obtained his original real estate salesperson license and subsequent renewals. Therefore, the Commission rules that Respondent did violate NH RSA 331-A:26, I and XXXVI.


In view of Respondent's current status and apparently good record and reputation in the community, the Commission will not revoke Respondent's real estate salesperson license, however, the Commission orders that Respondent, preferably through counsel, keep the Commission and Respondent's employing principal broker, informed and updated regarding any pending or future legal actions in the matters addressed herein. The Commission also orders Respondent to pay a disciplinary fine within six (6) months of the date of this Order to the State of New Hampshire General Fund in the amount of \$1,000 for violations of NH RSA 331-A:26, I, and in the amount of \$1,000 for violations of NH RSA 331-A:26, XXXVI, for a total of \$2,000.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

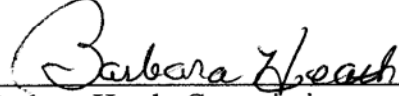
Commissioner Arthur Slattery evaluated this case and did not take part in the hearing or decision. Commissioner Nancy LeRoy was recused and did not take part in the hearing or decision.

  
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Martin F. Smith, Jr., Commissioner

10/14/03  
DATE

  
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Pauline Ikawa, Commissioner

10/14/03  
DATE

  
\_\_\_\_\_  
Barbara Heath, Commissioner

10/26/03  
DATE